

CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

Date: May 30, 2008

MEMORANDUM

TO: Plan Commission

FROM: Katherine C. Noonan, Assistant City Attorney

RE: Party Wall Agreement for 31 S. Henry Street

The City of Madison does not enforce private deed restrictions. The 1971 Party Wall Agreement between St. Raphael's Congregation and Daniel Neviaser was recorded as a restriction on the above property. The City is not, and never has been, a party to this agreement and therefore has no authority to enforce the agreement. The Plan Commission should consider the project only against the required ordinance standards.

As a separate issue, the ownership of the land under the party wall might impact the validity of the application. If the applicant did not own all of that land, but extended the party wall above its existing height, there might be an issue of whether the applicant owned all of the proposed development. It appears that the project redesign does not include the party wall, so that issue now has no relevance to the ability of the Plan Commission to consider the application.